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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C, 20554
AUG 15 2013

OFFICE OF
MANAGING DIRECTOR

Mr. Bruce Hollis
TCS Communication Solutions, LLC
13085 Lewistown Road
Queen Anne, MD 21657

Re: Waiver Request (Late Payment Penalty; 47
U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1164(c), 1.1914)
Licensee/Applicant: TCS Communication
Solutions, LLC
Station: N/A
Fee: Fiscal Year (FY) 2012 Regulatory Fees and
Late Payment Penalties
Date Request Filed: May 30, 2013
Date Regulatory Fees Paid: Not paid
Date Regulatory Late Penalties Paid: Not paid
Fee Control No.: RROG-12-00015234

Dear Mr. Hollis:

This responds to Licensee's *Request*¹ for waiver of the penalties for late payment of Fiscal Year (FY) 2012 regulatory fees. For the reasons stated herein, we deny the *Request*, but grant Licensee's separate *Installment Plan Request*² to pay the delinquent debts.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,³ and "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁴

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline, after which we must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2012, the deadline was September 13, 2012.⁵ We did not receive Licensee's

¹ E-mail Bruce Hollis, Managing Director, TCS Communication Solutions, LLC to (ARINQUIRIES) Arinquiries@FCC.gov (May 30, 2013)(*Waiver Request and Installment Plan Request*).

² *Id.*

³ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁴ 47 C.F.R. § 1.1164; 47 U.S.C. § 159(c)(1).

⁵ See Reminder That FY 2012 Regulatory Fees Are Due No Later Than September 13, 2012, Eastern Time (ET) Public Notice, DA 12-1423 (Aug. 31, 2012).

payment by that date, thus Licensee failed to meet its payment obligation, and we assessed charges. Licensee asks that we waive those charges on the assertion that “[s]ome how this got over looked, and this is the first notice of any kind regarding the fee.”⁶ We are sympathetic to the details of that disclosure; however, that explanation does not present legal grounds or clear mitigating circumstances to waive collection of the penalty. Repeatedly, the Commission has held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”⁷ For example, the absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.⁸ The Commission explained that, “[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail.”⁹ On July 31, 2009, the Commission released its order adopting these proposals,¹⁰ and notifying regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹¹ Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹² Finally, on September 2, 2009, the Commission released a third public notice that **“HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.”**¹³

Similarly, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”¹⁴ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁵

⁶ Request.

⁷ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009).

⁹ *Id.* at 5973, ¶ 20.

¹⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009) (FY 2009 Regulatory Fees NPRM).

¹¹ *Id.* at 10309, ¶ 26.

¹² *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹³ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

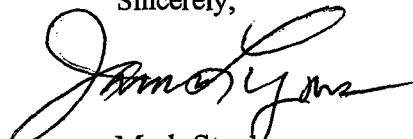
¹⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

¹⁵ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923, ¶ 12 (2010).

An employee's mistake or the failure to properly perform duties does not alter a licensee's obligation to pay its fees by the deadline. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁶ Furthermore, the penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. If the penalty is to be waived, it is "only in the most extraordinary circumstances,"¹⁷ which Licensee did not establish. Thus, we deny the *Request*.

We are providing a separate installment payment plan for Licensee. If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", written over a horizontal line.

FOR: Mark Stephens
Chief Financial Officer

¹⁶ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁷ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Stephen French

From: tcs@pipeline.com
Sent: Thursday, May 30, 2013 12:57 PM
To: ARINQUIRIES
Subject: REF BILL NUMBER: BRF R12P826928

I recently received your demand letter dated 5/20/2013.

Thank you for the information.

Our FRN 826928

As you can see from our account history we have been on time for all of our fees and reports.

Some how this got over looked, and this is the first notice of any kind regarding the fee.

We are a very small company and try hard to cover our requirements.

I like to offer the following:

- 1) A waiver of the penalty of \$1201.00
- 2) Establish an installment plan for the back fees, the amount required at this time, is not available to us, and we wish to setup the plan to help us cover this amount.

As we are have not had a situation like this before and based on our prior history with the FCC, we respectfully request the items above.

If you require any additional information, please let me know what is needed.

I appreciate your time and considerations of our requests and needs.

Thanks

Bruce Hollis
Managing Director
TCS Communication Solutions, LLC
410-364-5181